

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE APPLICATION	)	
OF DELMARVA POWER & LIGHT COMPANY,	)	
EXELON CORPORATION,	)	
PEPCO HOLDINGS, INC., PURPLE ACQUISITION	)	
CORPORATION, EXELON ENERGY DELIVERY	)	PSC DOCKET NO. 14-193
COMPANY, LLC AND NEW SPECIAL PURPOSE	)	
ENTITY FOR APPROVALS UNDER THE	)	
PROVISIONS OF 26 DEL. C. §§ 215 and 1016	)	
(Filed June 18, 2014)	)	
	)	

**PRE-HAERING BRIEF OF THE  
MID-ATLANTIC RENEWABLE ENERGY COALITION**

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## **INTRODUCTION**

The Delaware Public Service Commission (“Commission”) is faced with a difficult task in this matter; similar what is facing other utility commissions in the region in having to assess the proposed merger’s impact on their respective jurisdictions. The breadth and scope of this merger in and of itself is a major factor for the Commission’s consideration as to whether the proposed merger pursuant to 26 Del. C. §215, “is to be made in accordance with law, for a proper purpose and is consistent with the public interest.” The Commission also has the authority under this section to require such modifications, terms or conditions, “as it deems necessary or appropriate.”

After a number of settlement discussions with the parties in this matter, a comprehensive proposed settlement agreement (“PSA”)<sup>1</sup> was reached. While not all parties to the proceeding have joined the PSA, all of the parties representing the State of Delaware signed onto it (DNREC, Commission Staff and the Division of Public Advocate), as well as the Mid-Atlantic Renewable Energy Coalition (“MAREC”), Clean Air Counsel, Delaware Sustainable Energy Utility and Exelon Corporation (“Exelon”), PHI, Delmarva Power & Light Company (“Delmarva” or “Company”), and other related entities (collectively, the “Joint Applicants”). Parties not signing the PSA at this point are NRG Energy, Inc., Jeremy Firestone, Monitoring Analytics, LLC acting as the Independent Market Monitor for PJM, James Black, Executive Director for the Partnership for Sustainability in Delaware and Chesapeake Utilities Corporation.

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<sup>1</sup> The term “proposed settlement” is being utilized in this brief to reflect the fact that the document requires the Commission’s approval and consequently represents a proposal of the signing parties to the Commission.

The PSA contains numerous provisions agreed to by the Joint Applicants that provide substantial enhancement to the original commitments made by them in their Application for Approval of the Merger filed with the Commission on June 18, 2014. MAREC supports the merger in Delaware as a result of the additional commitments made by the Joint Applicants in the PSA and requests the Commission's approval of the PSA.

Upon the Joint Applicant's filing of their Application in this matter, MAREC had serious concerns with the proposed merger. MAREC Witness Peter A. Bradford concluded that the merger did not meet the Delaware legal standard for merger approvals, because the merger was not in the public interest given the lack of commitments with any value, essentially "leaving Delaware citizens no better off than had the merger never occurred."<sup>2</sup>

From MAREC's perspective, the proposed merger presented a serious challenge to Delaware's strong policy supporting renewable energy.<sup>3</sup> This policy is reflected in the State's renewable portfolio standard ("RPS")<sup>4</sup> that was enacted in 2005. Of considerable concern, as detailed in Mr. Bradford's testimony, was Exelon's campaign against the federal Production Tax Credit ("PTC"), which has been a major driver behind wind energy development across the United States; and the Company's position that renewable energy, especially wind energy, has been undermining the profitability of Exelon's nuclear fleet.<sup>5</sup> The concern was that this concerted effort against renewables would only be magnified if Exelon was able to consummate this merger. Moreover, Delmarva and its parent, PHI, had never engaged in such

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<sup>2</sup> Bradford testimony at 10

<sup>3</sup> Id.

<sup>4</sup> Del. C. § 351 et seq.

<sup>5</sup> Bradford testimony at 12-15

anti-renewables rhetoric and actions. If Exelon was successful in its efforts towards the PTC (a tax credit lowering the cost of production for every MWh of electricity produced) the cost to meet the RPS would almost certainly rise.<sup>6</sup> The merger under this scenario was contrary to the policy supporting renewables in Delaware. There being no real and significant commitment by Exelon to support renewable energy development, MAREC believed it critical for it to mount a serious challenge to the merger.

Subsequently, the negotiations in this matter led to tangible commitments in a number of areas. From MAREC's viewpoint, Paragraph 84 of the PSA, which reads as follows, represents a very substantial commitment to Delaware to support cost-effective renewable energy in the region:

**84. Competitive Request for Proposals -- Renewable Portfolio Standards**

For the purpose of meeting the renewable portfolio standards under current law, Delmarva Power will issue a competitive request for proposals ("RFP(s)") to purchase wind Renewable Energy Credits ("RECs") on commercially reasonable terms in three tranches: (1) the first for RECs from one or more renewable generating facilities with an aggregate capacity of up to 40 MW (nameplate) beginning in the compliance years 2017-2018 for a term of 10 to 15 years; (2) the second for RECs from one or more renewable generating facilities with an aggregate capacity of up to 40 MW (nameplate) beginning in the compliance years 2019-2020 for a term of 10 to 15 years; and (3) the third for RECs from one or more renewable generating facilities with an aggregate capacity of up to 40 MW (nameplate) beginning in the compliance years 2023-2024 for a term of 10 to 15 years. The Settling Parties agree that if

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<sup>6</sup> Id at 16

circumstances or conditions change (including but not limited to a material change in the projected load of Delmarva Power such that fewer RECs are required, or a substantial change in the cost of RECs through the spot market such that additional spot-market purchases in lieu of long-term contract purchases would be prudent), they will work in good faith with each other and present any proposed modification to the Commission as may be warranted by those changed conditions. The primary factor under the RFP bid process will be price, and all costs associated with the REC agreement(s) will flow through the Renewable Portfolio Compliance Rate surcharge currently in place to assure complete and timely cost recovery by Delmarva Power. Delmarva Power, with the concurrence of the Renewable Energy Task Force, shall file any such RFP pursuant to this paragraph with the Commission for its review and required approval prior to issuance. Any proposed contract(s) resulting from the RFP shall also be submitted to the Commission for final review and approval before execution.<sup>7</sup>

Although it is MAREC's view that additional commitments could have been made to make the settlement a better proposition for MAREC and provide even greater support for renewable energy policy in Delaware, MAREC believes that the PSA including Paragraph 84 is a substantial step forward for Exelon and lays a good foundation for Delmarva's active support of renewable energy projects in the region post-merger. MAREC supports the merger in Delaware, assuming that the PSA's approval in its entirety, as a reasonable compromise with substantial and tangible commitments to the State of Delaware and the PSA's signing parties.

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<sup>7</sup> PSA at 18-19.

## **ARGUMENT**

### **1. The Merger Should Be Approved**

The Commission must determine whether the statutory criteria for approval of an application for a change of control for a Delaware public utility as set forth in 26 Del. C. §§ 215(b) and 1016 have been satisfied with respect to the proposed merger. It must also find that the merger is in accordance with law, for a proper purpose and is consistent with the public interest and that the merger will ensure that Delmarva will continue to provide safe and reliable transmission and distribution services and that the merger complies with the provisions concerning labor contracts and employment specifically set forth in 26 Del. C. § 1016(b). MAREC will address its primary concern raised by this docket. That is the concern that the merger would lead to a post-merger Delmarva, controlled by Exelon, resisting the State's progressive renewable energy policies given Exelon's very public stance on renewable energy.

MAREC, whose members are wind energy developers, wind turbine manufacturers, service companies, public interest organizations and a transmission company, sought through the settlement process, to get a substantial tangible commitment from Exelon that would foster the development of wind energy resources, thus providing some reasonable assurance of Delmarva's post-merger support of renewable energy development. As with most settlements, the PSA was the result of extensive "give and take" negotiations, ultimately leading to the signing parties' acceptance of the merger proposal for Delaware as conditioned by the terms of the PSA. MAREC believes that the agreement to have three separate 40 MW wind renewable energy credit procurements to be competitively sourced for terms of 10-15 years as described

in Paragraph 84 of the PSA sufficiently addresses MAREC's primary concern with respect to the merger in Delaware. The renewable energy commitment made in the PSA is a major departure from Exelon's original starting point where it made no commitment to having Delmarva support renewable energy development. MAREC believes that the commitment in Paragraph 84 brings the merger more in line with Delaware's public policy supporting renewable energy development.

Three separate and sequenced 40 MW tranches leading to 10-15 year REC purchases to support the RPS will help wind energy projects obtain financing. Spot market purchases of RECs by themselves are insufficient to support the financing of wind projects in today's market. This commitment will help enable project financing, which should lead to reduced financing costs. The savings from lower financing costs would likely be passed onto ratepayers as part of the competitive solicitation contemplated in the PSA. The lack of long-term financing opportunities could lead to a situation where the market will become short, whereby the supply of RECs would be insufficient to meet demand. This situation would come at a time when most of the states in the region are in the process of annually ratcheting up their own renewable energy compliance requirements. This too increases demand for RECs, which could potentially exacerbate the situation, leading to vastly higher prices for RECs purchased in the spot market. The long-term REC procurement provision will not only help increase the supply of RECs, but as DNREC Witness Thomas Noyes stated, it would also "provide a measure of long-term price stability" for ratepayers.<sup>8</sup>

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<sup>8</sup> Noyes supplemental testimony at 3

From MAREC's standpoint the Paragraph 84 commitment in the context of the entire agreement is a fair resolution of our major concern with the proposed merger in Delaware. With all of the negotiated commitments/conditions in the PSA, MAREC agrees that record in this matter supports a determination by the Commission that the merger is in accordance with law, for a proper purpose and is consistent with the public interest and consequently should be approved.

## **2. Settlements Are to be Encouraged**

26 Del. C. § 512 makes it abundantly clear that settlements are to be encouraged in the context of Commission regulatory proceedings, "whether or not such stipulations or settlements are agreed to or approved by all parties where the Commission finds such resolutions to be in the public interest."<sup>9</sup> As previously mentioned, all of the parties representing the State of Delaware, including Commission Staff, have agreed to the PSA and support approval of the merger. Other key parties have joined in the settlement as well, including MAREC, and agree that the record supports approval of the merger. Given the totality of the settlement, the statutory encouragement for settlements and the fact that key parties with divergent interests came together and reached agreement on the contested issues in this case supports a Commission determination approving the merger.

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<sup>9</sup> 26 Del. C. § 512(c)



## **Conclusion**

MAREC respectfully requests that the Commission approve the merger and the terms and conditions of the PSA.

Respectfully submitted,



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